

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 SERTA SIMMONS BEDDING, LLC, \$ CASE NO. 23-09001-ADV
ET AL \$

5 \$ HOUSTON, TEXAS

6 VERSUS \$ THURSDAY,

7 \$ MAY 4, 2023

AG CENTRE STREET PARTNERSHIP, \$

ET AL \$ 1:00 P.M. TO 5:11 P.M.

8 **MOTION HEARING (VIA ZOOM)**

9 BEFORE THE HONORABLE DAVID R. JONES
10 UNITED STATES BANKRUPTCY JUDGE

11
12 APPEARANCES: SEE NEXT PAGE

13 COURTROOM DEPUTY: VRIANA PORTILLO

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16 **(Recorded via CourtSpeak)**

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(Please also see Electronic Appearances.)

1 HOUSTON, TEXAS; THURSDAY, MAY 4, 2023; 1:00 P.M.

2 THE COURT: All right. Then officially good
3 afternoon, everyone. This is Judge Jones. The time is
4 1:00 o'clock. Today is May the 4th, 2023. This is the
5 Docket for Houston, Texas.

6 On the 1:00 o'clock Docket we have Adversary
7 No. 23-9001, Serta Simmons Bedding, et al versus AG Centre
8 Street Partnership, et al.

9 Folks, I would ask that you go ahead and make your
10 electronic appearance in the main case and we will move that
11 over to the adversary after the conclusion of the hearing.

12 First time that you speak, if you would, please
13 state your name and who you represent, that really does give
14 a good point of reference in the event that someone makes a
15 transcript request.

16 And, finally, we are recording this afternoon
17 using CourtSpeak. We'll get the audio up on the Docket
18 shortly after the conclusion of the hearing.

19 So -- and, finally, I forgot this, Mr. Ruzinsky,
20 you are the only person in the courtroom, obviously
21 perfectly fine. When you do speak, I would ask that you
22 come to the lectern just so you can both be seen and be
23 heard.

24 I only had one taker on the raise your hand to
25 speak, so let me say that again. I have activated the hand-

1 raising feature. If you know you're going to be speaking,
2 can you go ahead and give me a five star? I'll get you
3 unmuted. Obviously you can change your mind at any time.

4 (No audible response.)

5 THE COURT: All right, still no takers.

6 Let me ask: Who's taking the lead for the Debtors
7 today?

8 MR. EHRLICH: Your Honor, I believe Mr. Gage has
9 raised his hand on the video, but not with the five star.

10 THE COURT: Got it. I'm sorry. Mr. Gage, what I
11 need for you to do on your telephone, however it is you are
12 hooked up, I need for you to hit five star. There you go.

13 All right. Mr. Gage, how about now?

14 MR. GAGE: Thank you, Your Honor.

15 THE COURT: All right, thank you.

16 Mr. Gage, I've read everything that's been filed.
17 I have certain -- I certainly have thoughts about one or
18 more of the paths that we may take today. I just want to
19 start with you. Where do you think we are?

20 MR. GAGE: Your Honor, the Debtors believe that
21 we've gone back and forth in good faith upon -- with several
22 proposals. We've been at an impasse. And I think our local
23 counsel will be arguing the -- you know, for us that we
24 believe we're entitled to this -- to these documents and to
25 this discovery information.

1 THE COURT: All right. And, Mr. Ehrlich, did you
2 have any observations that differ substantively from what
3 Mr. Gage said? Other than I know you don't think he's
4 entitled to what he's looking for?

5 MR. EHRLICH: Not only do we think he's not
6 entitled to it, we think it's a practical impossibility
7 given the timing here that we face a trial, you know, a week
8 from Monday.

9 THE COURT: Right. So with that -- and I want to
10 give you sort of some of my thoughts, and then we'll figure
11 out where to go.

12 Number one, I would really encourage the folks who
13 participated in the drafting of the responses, as well as
14 the motion to compel, to go back and perhaps review the
15 rules.

16 I am not particularly happy with either the motion
17 because it's missing a required certification that I have to
18 have in accordance with the rule that gives me some leverage
19 to move this along. And that's missing.

20 With respect to most of the responses, they are
21 sanctionable.

22 I encouraged folks not to play games when we
23 started down this path. And given the way that the
24 responses were handled with the objections, my guess is if I
25 had a hearing and I called the lawyer who actually drafted

1 those responses, it would be a relatively unpleasant day.

2 I do know the rules. I did this for a long time.

3 And I really don't like the game that's being played.

4 Now, let me also say -- because I'm perfectly
5 happy to deal with those two things. It's not something
6 that I'm unaccustomed to seeing. And I can work my way
7 through all of this relatively quickly and harshly.

8 Let me also say to the -- let me get to the merits
9 for just a second. I agree with Mr. Ehrlich's statement
10 that with the way that things are phrased, it's a practical
11 impossibility to meet the obligations that are required
12 under the rules and make the production given the way the
13 questions are asked.

14 That being said, let me also say I absolutely
15 understand the relevance of the discovery requests that were
16 made. It goes to the very heart of one of the things that
17 we are trying.

18 So let me -- number one, I'm happy to stop there
19 if I've said enough that people want to talk. I can also
20 make some suggestions. I can also entertain a, no, we
21 absolutely want to go forward and I've got all of my rules
22 marked and I am absolutely ready to go forward.

23 I want to be helpful to the process. I -- again,
24 I'm not out to make a point. I'm -- I've been presented
25 with a problem and I'm trying to evaluate the different ways

1 of dealing with that problem.

2 So let me go in the same order again. And I --
3 Mr. Ruzinsky, are you taking for Mr. Gage at this point
4 or --

5 MR. RUZINSKY: I was going to take the lead,
6 Judge. But --

7 THE COURT: Okay.

8 MR. RUZINSKY: -- I -- what I would suggest, I'd
9 really like to take Your Honor up on your offer to get some
10 substantive feedback. And then maybe the parties can use
11 that information and confer.

12 It's important that there, I think, either be an
13 agreement or, you know, a hearing that goes forward today.

14 THE COURT: No, I absolutely agree. So let me --
15 the easiest thing to do is, in terms of trying to be both
16 practical, as Mr. Ehrlich said, but to also recognize that I
17 do see the substance or the merits of the substance behind
18 the requests.

19 I don't know that every single one of those
20 requests was needed. But I got the point. It's a tough
21 argument to make that if you were out there doing the same
22 thing that you were somehow surprised, prejudiced by the
23 fact that it was done to you. I got that argument.

24 It would seem to me for purposes of what we are
25 trying that the identity and the transaction and all of the

1 data that would go with making a document production isn't
2 what's really needed. It's more or less trying to get a
3 handle around how many times it has happened. At least
4 that's my view of reading through it.

5 And it would seem to me that a stipulation as you
6 work your way through each of the requests -- and I don't
7 have the language committed to memory, but, you know, you
8 could agree and stipulate for purposes of the trial that,
9 you know, that the Defendants had engaged in -- and you fill
10 in the blank -- multiple transactions in which the following
11 occurred.

12 And it would seem to me that that would prove the
13 point. It would also deal with the practicality of trying
14 to search countless documents and having to worry about
15 nondisclosure and all of those issues and in what will be a
16 very public airing of this issue. It would probably best
17 serve everyone to sort of find that type of approach.

18 I can also see -- because, again, that would prove
19 the point to me. I mean, if you -- and I don't even think I
20 need 25, 50. I think multiple times is more than sufficient
21 to make the point that the Debtors are -- that the Debtors
22 want to make with respect to this.

23 And the truth is what the truth is. And if the
24 Debtors have done it, they may have good arguments. They
25 may have countervailing evidence as to why that's not a

1 valid point. But you can't run from the point. That is
2 kind of where I was headed.

3 You know, I can start stepping back in terms of a
4 list and with defined categories on that list. I'm -- I
5 have trouble seeing what that really adds unless there's a
6 dispute as to whether or not something happened or it
7 didn't.

8 And then, you know, with respect to the documents
9 themselves, I mean, if the Debtors wanted to agree to a
10 continuation of the confirmation hearing and trial, which I
11 know you don't, then I -- you know, I understand the issue
12 about producing a ton of documents.

13 So -- and I don't pretend to have a corner on all
14 possible options. I -- if parties have something else that
15 would make sense. But the easiest thing for me and what is
16 going to prove the point to me -- because I don't need
17 someone to get up and walk me through a transaction.

18 The point that you made that really piques my
19 interest is the fact that it occurred. I don't know what
20 else to say.

21 What would you like to do with that? Was that
22 enough feedback?

23 MR. RUZINSKY: I think so, Your Honor. And we had
24 actually offered a stipulation before the hearing here. And
25 I think with the benefit of Your Honor's input, I think we

1 can -- I'd like for us to be able to go back offline and
2 visit that concept, maybe some form of the stipulation we
3 had previously prepared, or some different one --

4 THE COURT: Well --

5 MR. RUZINSKY: -- that addresses what Your Honor's
6 main point is.

7 THE COURT: Sure. Let me ask. Mr. Ehrlich, are
8 you the point person on this?

9 MR. EHRLICH: I am, Your Honor.

10 THE COURT: And so would it be -- would you have
11 any interest in talking to Mr. Ruzinsky about perhaps an
12 alternative, either along the lines of something I suggested
13 or something else that you may have in mind?

14 MR. EHRLICH: Your Honor, I'd be happy to talk to
15 Mr. Ruzinsky. And the guidance is helpful.

16 The one -- as with all things like this, the devil
17 is in the details, right? I mean, there are transactions,
18 couple of which are identified in the request, --

19 THE COURT: Right.

20 MR. EHRLICH: -- that are disputed that our
21 clients were participants in that in our view are materially
22 different in very important ways from the transaction issue
23 here.

24 And one of our concerns about going down this road
25 is we then go down a, well, you know, this transaction, you

1 know, has this feature and that other transaction doesn't,
2 it doesn't affect, you know, pro rata sharing.

3 And the crux of the problem here is that you have
4 first lien lenders with differing levels of rights to the
5 collateral which is -- so in theory, a stipulation is great.
6 I just -- you know, we'll need to work through kind of how --
7 because what we had been presented by the folks on -- my
8 friends on the other side was something extremely generic --

9 THE COURT: Okay.

10 MR. EHRLICH: -- and at a very high level of
11 abstraction.

12 But if we -- you know, we are happy to negotiate
13 in good faith specific, you know, terms of a stipulation.

14 THE COURT: So let me react to that just a little
15 bit. As I read through -- so I haven't seen what got
16 proposed so I'm somewhat talking about something I haven't
17 seen.

18 And -- but it would seem to me that as I read
19 through the differing requests for production, they all end
20 with different language. And I got the point that you're
21 trying to get to something different and trying to peel off
22 parts of it.

23 And what I had envisioned in my mind was a series
24 of stipulations which -- and I fully get that the answer to
25 some of them could be, yes, we can agree to that; two, we

1 don't think we did "B" and we think that we did "C." And I
2 totally got that. I don't know any of those things because
3 I'm not participating in the conversations.

4 But it seemed to me that if you really broke it
5 apart and tracked the request for production in terms of
6 whether or not a stipulation could or could not be entered
7 into, that that might make it easy; because I was worried
8 about if you did it -- if you did something that was very
9 generic, good lawyers will always pick that apart and say
10 nothing falls, you know, or everything falls within that.
11 And I was trying to avoid that.

12 MR. RUZINSKY: And, Your Honor, I'm --

13 THE COURT: Yeah.

14 MR. RUZINSKY: -- happy to -- if it's all right
15 with Your Honor and the parties, we had proposed eight
16 stipulations. I'm happy to read them into the Record. And
17 if it's what you had in mind, if it's something good to work
18 off of, happy to run with that.

19 THE COURT: So let me do this because, number one,
20 you know, I can't make people enter into a stipulation.

21 MR. RUZINSKY: Understand.

22 THE COURT: That's the whole point behind it. And
23 I don't know -- I don't -- I -- if -- I'm going to look at
24 that sort of in the context of a settlement discussion. So
25 I don't want to see those.

1 What I don't want to do -- and so that everyone
2 knows -- is I have a very brief Chapter 13 Panel at 2:30.
3 The rest of the afternoon has canceled and so I have far
4 more time than I had, you know, than I thought I had
5 yesterday.

6 I am perfectly happy for you all to talk offline
7 and see if you can come up with something. But I want to
8 make it very clear. I am -- you know, I'm not -- I'm
9 perfectly happy if you don't agree. And we're going to
10 resolve this one way or another today.

11 And, you know, I'm not going to be shy, again
12 because I'm not happy with where this sits. I'm not happy
13 that I had leverage taken away from me by folks not
14 following the rule. I'm not happy that I have responses
15 that, in my view, are just the worst abuse of Rule 37,
16 period.

17 And the question then becomes, because I don't
18 have the certification that I need, what I can do about it.
19 And when you let my mind get out of the box, and I can start
20 being creative, that tends to be not good for anyone but me
21 because I will smile.

22 So I will -- I -- again, I'm a big believer in
23 letting you control your own destiny. And I'm trying to
24 give you every opportunity to do that.

25 But want to make, you know, however we get to it,

1 the point that -- the point of those discovery responses is
2 important to me. I'm just telling everybody that so that
3 it's not a secret.

4 So why don't we do this, Mr. Ruzinsky? It is --
5 and Mr. Ehrlich. It is 1:16 Central Time. Mr. Ruzinsky,
6 what we'll do is I'll have Mr. Alonzo come out and unlock my
7 conference room so --

8 MR. RUZINSKY: Oh, wonderful.

9 THE COURT: -- you have a place with a table and
10 privacy.

11 MR. RUZINSKY: Wonderful.

12 THE COURT: I assume that you know how to reach
13 out to Mr. Ehrlich.

14 What I would ask is if you get to, let's say
15 30 minutes, so that would be 1:45, if you get to 1:45, I'd
16 either like a we're going to agree to disagree or we've
17 actually found a path that makes some sense and we need some
18 extra time.

19 Or you can obviously always come out, Ms. Portillo
20 will be here in the courtroom, and say we've actually got a
21 solution, can you get Jones back on the bench.

22 Does that make sense?

23 MR. RUZINSKY: It certainly does, Judge. If I can
24 just ask perhaps Mr. Gage to join us and maybe he can
25 initiate the call. If he calls my cell and calls

1 Mr. Ehrlich, we'll have a three-way call.

2 THE COURT: He's shaking his head yes, so that
3 seems to --

4 MR. RUZINSKY: Great.

5 THE COURT: -- work just fine.

6 MR. RUZINSKY: Excellent.

7 THE COURT: All right, gentlemen --

8 MR. EHRLICH: And, Your Honor, --

9 THE COURT: Yes, sir.

10 MR. EHRLICH: -- can I just add one thing, please,
11 if I may before we break? I think, you know, we are very
12 much open to negotiating a stipulation. And, you know,
13 we'll work in good faith with Mr. Ruzinsky and Mr. Gage.

14 The one thing I would just point out is I think
15 what we could agree to today, and I hope this will be okay
16 with the Court, assuming we can agree, are the items as to
17 which we would stipulate either something did or didn't
18 happen.

19 We have multiple clients. They are not all
20 situated the same. And, frankly, we will need to do some
21 inquiries, which we can do, you know, briskly.

22 THE COURT: Sure.

23 MR. EHRLICH: But I don't think we could respond
24 on the -- like I don't think we could have a signed
25 stipulation today as to any particular topic. But what we

1 could say is we will respond and say we stipulate "X" did or
2 did not happen. We could agree to the converse of that
3 today.

4 And then, you know, promptly within, you know, the
5 coming days respond in substance. Does that make sense?

6 THE COURT: So I perfectly understand the
7 approach. When did depositions start?

8 MR. RUZINSKY: So depositions have started, Judge,
9 and --

10 THE COURT: Oh, they've already started.

11 MR. RUZINSKY: And there are depositions Monday,
12 Tuesday, and Wednesday of some of the parties that are
13 included in the --

14 THE COURT: Yeah, so --

15 MR. RUZINSKY: -- group we're trying to get
16 production from.

17 THE COURT: So this is going to get -- this is
18 going to need to get done before Monday comes.

19 MR. RUZINSKY: Yes.

20 THE COURT: And, Mr. Ehrlich, --

21 MR. EHRLICH: Yeah.

22 THE COURT: -- I got what you're telling me. You
23 -- and absolutely you're going to need to run this down with
24 each and every one. I -- you're in a tough spot, I got
25 that.

1 But I want the approach -- if we're going to do
2 that, I want the approach agreed on. If we're not going to
3 do that then obviously, you know, I mean, an order's an
4 order and we can go from there.

5 MR. RUZINSKY: Right.

6 THE COURT: That make sense?

7 MR. EHRLICH: It makes perfect sense.

8 MR. RUZINSKY: Yes, Judge.

9 THE COURT: All right. Then just let me know when
10 you're ready.

11 And for those folks who are listening, and there
12 are a large number of folks listening, given that I will
13 retake the bench the earlier of 1:45 Central, or if there is
14 a quicker resolution I'll come back out and hear that
15 resolution. So that puts those folks who are listening in a
16 difficult position. We'll leave the phone lines on. I
17 don't really know what else to do. So we'll leave it there.

18 MR. RUZINSKY: All right.

19 THE COURT: All right.

20 MR. RUZINSKY: Thank you, Judge.

21 THE COURT: Thank you.

22 (Recess taken from 1:19 p.m. to 1:46 p.m.)

23 AFTER RECESS

24 THE COURT: All right. We are back on the Record
25 in Adversary No. 23 -- camera, thank you -- 23-9001, Serta

1 versus AG Centre Street Partnership.

2 Mr. Ruzinsky.

3 MR. RUZINSKY: Yes, Your Honor. Mr. Ehrlich and
4 Mr. Gage and I had a short call for a status update for the
5 Court.

6 Mr. Ehrlich is working on a revised version of the
7 previous stipulation that was offered.

8 THE COURT: Okay.

9 MR. RUZINSKY: And he's going to get that to us.
10 We don't have it yet. I expect to get a draft any time now,
11 and we're going to try and work off of that.

12 THE COURT: Fair enough. Thank you for that.

13 Let me ask just to try to be practical about using
14 our time. You know, let's assume -- because nothing ever
15 happens quickly. Let's assume that you get a stipulation
16 back at 2:00 o'clock. You've got to then talk to your team
17 about that as well.

18 And as I said, I've got a Laredo Chapter 13 Panel
19 at 2:30. Just given that one of the lawyers has had a
20 severe case of COVID, so I've continued all of his cases, so
21 that -- I mean, that's roughly a third of it, I can't
22 imagine it takes me more than 30 minutes or so to do that.

23 And where I was going with this so that folks who
24 are watching and listening would know, we came back at
25 3:00 o'clock, seems to me that would give -- if you don't

1 have something resolved, it would seem to me that gives
2 everybody an opportunity to make their arguments. I can
3 respond to whatever questions I have. And then I can give
4 everybody a ruling.

5 Does that make sense?

6 MR. RUZINSKY: Yes, it does, Your Honor.

7 THE COURT: Mr. Ehrlich, I see you popping in
8 there. Are you on?

9 MR. EHRLICH: (No audible response.)

10 THE COURT: I need for you to hit five star again
11 if you had gotten off the phone. Should be there now.

12 MR. EHRLICH: Can you hear me, Your Honor?

13 THE COURT: Loud and clear, thank you.

14 What I had -- I didn't know how much of that that
15 you heard. I proposed to -- Mr. Ruzinsky gave me an update.
16 And what I proposed to him was -- just because I know things
17 take time and people have to review and people have to talk
18 to clients, what I had proposed was I don't see how we can
19 make a lot of progress before my Chapter 13 Panel. But it's
20 a Laredo Panel, and it's relatively short.

21 And so what I had suggested is that we reconvene
22 at 3:00 o'clock Central Time. That would -- if you've got
23 something done, terrific. If you don't, it seems to me that
24 would give everyone ample opportunity to make the arguments
25 that they wanted to make. Does that make sense?

1 MR. EHRLICH: Your Honor, that's fine. What I
2 would -- had just suggested to -- we were a little late,
3 Mr. Gage and I, because we were speaking on the phone.

4 THE COURT: Okay.

5 MR. EHRLICH: And I think we are working in good
6 faith. I think we should be -- there were eight items that
7 had been sent in a proposed stipulation over the weekend.
8 Six of them -- two of them seemed to us too subjective in
9 nature to really be the subject of a stipulation.

10 THE COURT: Okay.

11 MR. EHRLICH: There were six of them that we
12 thought we could work with, subject to wordsmithing.

13 We proposed -- I proposed Mr. Gage that we respond
14 to these topics for -- there are eight clients that we
15 represent, but three of them are -- have more substantial
16 holdings and are the three that the Debtors intend to depose
17 next week, that we respond with respect to those three out
18 of the eight, and that we use this afternoon and evening to
19 hammer out the language, because I've spoken to -- I was
20 able to speak to only one of them in the 30 minutes since we
21 were -- we broke. And that client had some, I thought, fair
22 suggestions about the language.

23 And it's just going to be very hard to get sign-
24 off this afternoon. But we will work very hard. And, you
25 know, we heard the Court about, you know, working this out.

1 THE COURT: Okay. So I -- again, I'm not trying
2 to get in the way of any discussion. I'm just telling you
3 all that I've got a motion before me. Unless that --

4 MR. EHRLICH: Yes.

5 THE COURT: -- motion is withdrawn or there's an
6 agreement to push it, I'm going to hear the argument and I'm
7 going to rule. So let me ask: Do you want to take until --
8 and I -- this is a question for everybody. Do you want to
9 take until 3:00 o'clock to see your -- sort of gauge your
10 level of comfort and then come back and give me a status
11 report, or proceed ahead with the motion, or anything else
12 that you all work out?

13 Again, I'm not going to get in the way of
14 progress. I'm just here if --

15 MR. EHRLICH: Right.

16 THE COURT: -- progress isn't getting made.
17 That's all I'm trying to tell everybody.

18 MR. RUZINSKY: Appreciate that, Your Honor. And --

19 MR. EHRLICH: I --

20 MR. RUZINSKY: -- I would like -- oh, I'm sorry.
21 I would like to have that 3:00 o'clock Central Time as a
22 target. And then if we've got an agreement or enough of one
23 by then, that's one thing. And if we don't, we can go
24 forward.

25 THE COURT: So as you're working through --

1 because ordinarily I would have said you have time tomorrow.
2 I have a personal medical issue that I have to take care of
3 tomorrow. You know, that's all the information I'm going to
4 disclose.

5 MR. RUZINSKY: I understand.

6 THE COURT: It's just one of those things you have
7 to do from time to time. I'm just not going to be available
8 tomorrow. If I need --

9 MR. EHRLICH: Understood.

10 THE COURT: If I need to be, I could be available
11 on Saturday. But I'm just not available tomorrow.

12 MR. RUZINSKY: I think today would be best, Your
13 Honor, thank you.

14 THE COURT: All right, terrific. Then I will see
15 everybody back at 3:00 o'clock. You've got full range of
16 options. And you have as much time as you need today.

17 MR. RUZINSKY: Thank you, Judge.

18 THE COURT: All right.

19 MR. RUZINSKY: Very much appreciate it.

20 THE COURT: Thank you. And we'll be adjourned
21 until the 2:30 Laredo Chapter 13 Panel.

22 (Recess taken from 1:52 p.m. to 3:10 p.m.)

23 AFTER RECESS

24 THE COURT: The time is 3:10 Central. We are back
25 on the Record in Adversary No. 23-9001. Folks, if you have

1 dialed back in, I have reactivated the hand-raising feature.
2 If you're going to be speaking, I need for you to give me a
3 five star on your telephone.

4 And, Mr. Ruzinsky, if I could ask you to go ahead
5 and come to the lectern --

6 MR. RUZINSKY: Certainly, Judge.

7 THE COURT: -- please, sir.

8 (Pause in the proceedings.)

9 THE COURT: All right. There's one five star.
10 Mr. Ehrlich, I think that's you.

11 MR. EHRLICH: Can you hear me, Your Honor?

12 THE COURT: I can hear you loud and clear. I just
13 only got one five star.

14 Mr. Gage, are you letting Mr. -- are you deferring
15 to Mr. Ruzinsky, or are you having issues? Just give me a
16 thumbs up if you're -- if you've hit five star. So you --
17 not a great lip reader. It's -- I'm taking classes, but not
18 a great lip reader. Can't hear you. Ah, there you are.
19 There we go. How about that?

20 MR. GAGE: I'm deferring to Mr. Ruzinsky.

21 THE COURT: Fair enough. All right.

22 (Laughter.)

23 THE COURT: Mr. Ruzinsky, where are we?

24 MR. RUZINSKY: So, Your Honor, the last I heard,
25 which was right before 3:00 o'clock, there had been no

1 agreement reached, and there was still a conversation going
2 on or about to be had and I think it was one of those break
3 through or impasse conversations, and I don't know for sure
4 the outcome. So I'm going to ask Mr. Ehrlich and Mr. Gage
5 if there's been any development since what Mr. Ehrlich sent
6 over, which was not quite what we were expecting.

7 THE COURT: Got it. So let me do it this way,
8 just in case there is anything productive occurring. I
9 don't want people to -- I don't want people to step on top
10 of anything. Would it be of benefit to the parties to have
11 some additional time, or should we go forward with the
12 hearing?

13 Let me -- Mr. Ehrlich, let me start with you.

14 MR. EHRLICH: I think it would be of benefit to
15 allow some additional time, Your Honor. I just made a
16 proposal to one of Mr. Gage's -- a couple of Mr. Gage's
17 (indiscernible). We proposed getting access a slightly
18 different way, but I think that's the information that --

19 THE COURT: Enough --

20 MR. RUZINSKY: -- the Debtors and the first --

21 THE COURT: Enough said. I don't want to --
22 again, I don't want to -- I don't want anyone to feel
23 defensive about anything that might get said. Let me just
24 do it this way.

25 Mr. Gage, do you believe that some additional time

1 might be helpful? I can't --

2 MR. GAGE: Yeah.

3 THE COURT: Oh, okay. Got it. Thank you.

4 Let me ask --

5 MR. GAGE: Yeah --

6 THE COURT: -- so --

7 MR. GAGE: -- it might be helpful.

8 THE COURT: All right. How much time? Because,
9 again, I want to leave time enough to have the hearing if we
10 need it. So, but I -- yeah. I'm perfectly prepared to stay
11 late, but I just -- I want everyone -- I don't want anyone
12 to think that they're going to run the day out without
13 having a hearing. But you all tell me what you think would
14 be helpful.

15 MR. GAGE: I think I would be helpful to have
16 another 15 minutes for us to confer and then give you
17 another update.

18 THE COURT: Fair enough. So then let's do this:
19 Mr. Ruzinsky, it's 3:14, I'll step back out at 3:30 and
20 we'll just find out where we are.

21 Mr. Ehrlich, does that work for you?

22 MR. EHRLICH: It does. It does, Your Honor. If
23 we might, half an hour might be -- allow us to make a little
24 more progress, but if you want 15 minutes, that's fine, too.

25 THE COURT: So let me do this just because I want

1 to give those folks who are listening, because there are a
2 large number of folks who are paying attention to this, and
3 I want to make sure that they are updated as well. If you
4 all are talking, continue to talk.

5 And, Mr. Ruzinsky, you can just come in and say,
6 "We'd like another 15 minutes." And again, I just want to
7 be courteous to everyone, but I don't need everybody to stop
8 talking to come in and tell me that they want to continue
9 talking. Mr. Ruzinsky, you just come in and do that if that
10 makes sense.

11 MR. RUZINSKY: Certainly, Judge.

12 THE COURT: All right. Then I'll see everybody
13 back 3:30 Central Time. We'll be adjourned.

14 MR. RUZINSKY: Thank you, Judge.

15 MR. GAGE: Thank you, Your Honor

16 (Recess from 3:15 p.m. to 3:45 p.m.)

17 AFTER RECESS

18 THE COURT: Well, we are back on the Record in
19 Adversary No. 23-9001.

20 Mr. Ruzinsky?

21 MR. RUZINSKY: At the risk of repeating myself,
22 Your Honor, we'd like a little bit more time. I understand
23 there's been some progress made.

24 THE COURT: Okay. Why don't we do -- let me ask
25 this, and again, I want to be helpful and I don't mean to be

1 a drag with you having to come back in here and --

2 MR. RUZINSKY: Not a drag at all.

3 THE COURT: -- stopping progress. I want to say
4 4:15 with the understanding that if we're not done by 4:15
5 I'm going to expect you to either step up and argue or do
6 something with the motion. Is that fair?

7 MR. RUZINSKY: Yes, it is, Your Honor.

8 THE COURT: All right. Thank you.

9 Then we'll be adjourned until 4:15.

10 MR. RUZINSKY: Thank you, Judge.

11 (Recess from 3:46 p.m. to 4:15 p.m.)

12 AFTER RECESS

13 THE COURT: All right. Good afternoon everyone.
14 This is Judge Jones. The time is 4:15, we are back on the
15 Record in Adversary No. 23-9001.

16 Mr. Ruzinsky?

17 MR. RUZINSKY: Your Honor, I've been informed that
18 the parties are mighty close, not quite there yet. I don't
19 want to sound like a broken record, I may be sounding like
20 that, but if we could ask the Court's indulgence for a
21 little bit more time.

22 THE COURT: Sure.

23 MR. RUZINSKY: And I'm going to try and play it
24 safe here and if we can go to 4:45 Central Time, but if Your
25 Honor has another time frame you want to use, that's

1 perfectly fine.

2 THE COURT: Look, it's -- I want to know, because
3 I've got to make arrangements because Ms. Portillo has
4 little ones and those take priority, so I'm going to go make
5 arrangements to make sure that I have somebody on stand-by
6 in case we need to proceed. My time's easy, but I worry
7 obviously about those with families.

8 We'll be adjourned until 4:45 Central.

9 MR. RUZINSKY: Thank you very much.

10 THE COURT: All right. Thank you.

11 (Recess from 4:16 p.m. to 4:46 p.m.)

12 AFTER RECESS

13 THE COURT: All right. Good afternoon again,
14 everyone. This is Judge Jones, the time is 4:46 Central,
15 May 4, 2023. Back on the Record in Adversary No. 23-9001.

16 Mr. Ruzinsky?

17 MR. RUZINSKY: Your Honor, I think it might be
18 most helpful to get the most current update from Mr. Ehrlich
19 and Ms. Barrington.

20 THE COURT: Certainly.

21 Mr. Ehrlich, could you hit five star for me?

22 MR. EHRLICH: Your Honor?

23 THE COURT: Yes, sir.

24 MR. EHRLICH: Can you hear me, Your Honor? Thank
25 you.

1 THE COURT: Loud and clear.

2 MR. EHRLICH: So I think we are very, very close
3 to reaching agreement. I said we had proposed final
4 language that was just exchanged. I have not heard back
5 from Ms. Barrington yet, but what we've done just so the
6 Court is aware is rather than attempt to wordsmith a
7 stipulation with a cast of thousands, we agreed to respond
8 to certain interrogatories asking if the clients had
9 undertaken -- to identify any transactions that the clients,
10 the Defendants had undertaken that had certain
11 characteristics, and we have identified four interrogatories
12 to -- of that ilk and we are just negotiating some final
13 language. But I think we are extremely close to having
14 reached resolution.

15 THE COURT: All right. And again, I want to make
16 efficient use of everyone's time. 15 minutes? 30 minutes?
17 And again, just be realistic.

18 MR. EHRLICH: Well, Your Honor, as -- if we can
19 real time, I just got an email from Ms. Barrington that they
20 are fine with one of them, and on the other two -- I
21 misspoke, there are not four, there are three -- and on the
22 other one I haven't gotten to send here our confirmation.
23 But let's do 15 minutes because I made one small change to
24 the other two.

25 THE COURT: All right.

1 MR. EHRLICH: But we're very close.

2 THE COURT: All right. Thank you. Then we'll
3 reconvene at 5:00 o'clock Central. Thank you.

4 MR. RUZINSKY: Thank you, Your Honor.

5 MR. EHRLICH: 5:00 o'clock.

6 (Recess from 4:48 p.m. to 5:01 p.m.)

7 AFTER RECESS

8 THE COURT: All right. We are back on the Record.
9 The time is 5:01 Central, and it's Adversary No. 23-9001.

10 All right. And for Mr. Gage, Mr. Ehrlich, you go
11 ahead and hit five star for me just so I can -- in case you
12 do need to speak.

13 All right. Mr. Ruzinsky?

14 MR. RUZINSKY: Your Honor, I believe that there's
15 an agreement. I see Mr. Ehrlich shaking his head, I see
16 Mr. Gage shaking his head, both shaking in the yes mode.

17 THE COURT: Then congratulations. That's what's
18 smart lawyers do is assess risk and figure out where to
19 land. Let me ask, now do we memorialize this, or have you
20 all talked about that?

21 MR. RUZINSKY: I believe it will be read into the
22 Record, and I'm very much in favor of that, and also
23 suggested a follow-up stipulation and agreed order, which I
24 think would be good.

25 THE COURT: All right. Mr. Ehrlich, that work for

1 you?

2 MR. EHRLICH: Yeah, I don't know that an agreed
3 order is necessary, but happy to read it, if that's, you
4 know, the Court's preference.

5 THE COURT: I have --

6 MR. EHRLICH: We have an agreement.

7 THE COURT: -- yeah, I don't have one, but I do
8 want there to be some -- I want there to be some
9 memorialization of what you all have worked so hard all
10 afternoon to do. I don't want there to be making something
11 up, I don't want there to be two versions of an email, I
12 don't want there to be different perceptions inside of two
13 different parties. So I'm --

14 MR. EHRLICH: There is a detailed email, Your
15 Honor, a detailed email that Ms. Barrington of Weil Gotshal
16 and I exchanged which we're happy to read into the Record.

17 THE COURT: All right. Fair enough. Then --

18 MR. RUZINSKY: That'll be fine, Your Honor.

19 THE COURT: -- read away.

20 MR. EHRLICH: Would you like me to read it,
21 Mr. Ruzinsky? I'm happy to.

22 MR. RUZINSKY: Yes, please. Thank you.

23 MR. EHRLICH: Okay. Sure. The agreement, Your
24 Honor, is that the Defendant shall answer in substance each
25 of Plaintiff's joint second set of interrogatories to

1 Defendant dated April 10. Defendants will defer response to
2 Interrogatory Number 2 at the time and which Plaintiffs
3 reserved their right to seek a response.

4 Interrogatories 1, 5 and 6 shall be amended as
5 follows: Interrogatory 1: Please identify and describe with
6 particularity all transactions in which you have
7 participated, including without limitation the April '22
8 Envision transaction and October 2022 (indiscernible)
9 transaction that resulted in existing loans contractually --
10 excuse me, existing loans governed by US law being
11 (a) exchanged for new loans and/or (b) repurchased by the
12 borrower of such loans, in either case with the
13 consideration being new loans in whole or in part and with
14 such new loans being contractually and/or structurally
15 senior to such borrower's existing debt and which were no
16 offered to all lenders and particular class of loans.

17 Interrogatory 5 as amended shall state: Identify
18 all transactions since January 1, 2014 in which you have
19 participated with certain lender and class of debt governed
20 by US law received differential -- I believe actually -- and
21 I'll ask Mr. Gage to correct that -- I believe that's
22 actually a loan governed by US law receives differential
23 treatment, consideration, benefits, or terms than other
24 lenders in that same class, and any portion of the
25 differential treatment, consideration, benefit or terms were

1 not offered to all lenders in that class including without
2 limitation the April 2022 Envision transaction and October
3 2022 (glitch in the audio) transaction.

4 And, Mr. Gage, is that correct that that is just a
5 loan (indiscernible)? Okay. We'll come back to that.

6 THE COURT: I'm guessing he's right there and he's
7 still on the phone, even when he turns his camera off.

8 MR. GAGE: I'm here. Just a second to confer on
9 that.

10 THE COURT: Understood.

11 MR. EHRLICH: Well, let's keep going and then
12 we'll come back to that point.

13 Interrogatory 6 now reads: Identify all
14 transactions since January 1, 2014 in which you held loans
15 governed by US law in a certain class, include all
16 transactions where other lenders in that class received
17 differential treatment (glitch in the audio).

18 Defendant shall answer in substance each of
19 Plaintiff's joint second set of requests for admission dated
20 April 10, 2023. I referenced Interrogatories 1, 5 and 6
21 (indiscernible) shall be understood to refer to the
22 interrogatories as amended by this stipulation.

23 After Plaintiffs receive Defendant's responses to
24 the interrogatories and are (glitch in the audio),
25 Plaintiffs reserve the right to seek additional details of

1 any transactions identified in Defendant's responses. If
2 Plaintiffs seek such additional detail about any transaction
3 and Defendant's refuse to provide it, Plaintiffs reserve the
4 right to seek additional relief from the Court, and
5 Defendants waive the right to argue delay.

6 Defendants would preserve all of their other
7 rights vis-à-vis any follow-up requests including the
8 special request may be unduly burdensome or that there's
9 insufficient time to address such a request with the time
10 remaining before trial, and the Debtors reserve the right,
11 you know, to oppose the market.

12 Next, Defendant shall provide responses to the
13 interrogatories and RFAs only for Angelo Gordon, Gamut and
14 Apollo (phonetics), Angelo Gordon shall provide their
15 responses by the end of the day on May 6, 2023 and Gamut and
16 Apollo by the end of the day on May 7, 2023. In exchange to
17 responding to the interrogatories and RFAs, Defendants will
18 not need to respond to Requests 12 to 15, 18 or 19 in the
19 Plaintiff's joint requests for production of documents dated
20 April 10, 2023.

21 I believe with the one open question as to whether
22 the -- Interrogatory 5 is intended to say debt or a loan. I
23 think that is the entirety of the agreement.

24 THE COURT: Mr. Gage?

25 MR. GAGE: Your Honor, I'm very happy to report

1 that we are in agreement on the term loan.

2 MR. RUZINSKY: Your Honor, may I make a
3 suggestion?

4 THE COURT: Of course.

5 MR. RUZINSKY: This is Bruce Ruzinsky.

6 Just because there was a little bit of static
7 or --

8 THE COURT: Yeah, there was some background noise.

9 MR. RUZINSKY: -- yeah, some background noise, and
10 in case the -- whenever it's transcribed if there's anything
11 missing there, my suggestion would be that the parties
12 memorialize this in at least a notice that gets filed, and
13 all the language is very clear.

14 THE COURT: Either do that or agree that -- an
15 email and submit the email as a -- I'll take it as the
16 equivalent of a Rule 11 agreement, that's --

17 MR. RUZINSKY: Perfect.

18 THE COURT: -- fine with me, too.

19 MR. RUZINSKY: Perfect.

20 THE COURT: I'll leave -- you all are certainly
21 more than skilled enough to figure out how to do that. I
22 just don't want there to be any questions.

23 MR. RUZINSKY: Neither do I.

24 THE COURT: And with that -- and let me just
25 confirm. Mr. Gage, you've seen the email that Mr. Ehrlich

1 read from and you agree that that resolves the issues for
2 today and represents the outcome of the discussions we've
3 had over the past several hours?

4 MR. GAGE: Yes, Your Honor.

5 THE COURT: All right. Then with that, I
6 appreciate you folks working hard to get through that. I'll
7 -- I will leave you all to do what you do so well. Is there
8 anything else since I have you that we need to talk about,
9 any changes that we see coming, and again, I'm just trying
10 to manage the calendar.

11 MR. RUZINSKY: I've got one question, and --

12 THE COURT: Perfect.

13 MR. RUZINSKY: -- maybe -- Mr. Ehrlich, you know,
14 with the depositions coming up, and the resolution of these
15 issues here, I think I had seen a letter about not, you
16 know, not -- I can't remember if it was PJT Partners or
17 somebody else not discussing, or not going to be discussing
18 certain things at a deposition.

19 Do I understand correctly that what's been agreed
20 to here and the topics that are agreed to in the
21 interrogatory that that will inbounds and can be the subject
22 of questioning at these depositions?

23 MR. EHRLICH: For our client certainly. For PJT
24 we do not represent PJT, they're represented by the Simpson
25 Thatcher firm. I'm not sure I've seen the letter that

1 you're referring to, Mr. Ruzinsky, so I suggest that you
2 work those issues out with counsel for PJT. But --

3 MR. RUZINSKY: I will.

4 MR. EHRLICH: -- I really don't think we take the
5 position they've taken.

6 MR. RUZINSKY: As long as we're fine on the three
7 that are covered here, we can take that up separately with
8 PJT's counsel. Thank you.

9 THE COURT: All right. Anything else?

10 (No audible response.)

11 THE COURT: We still on track?

12 MR. RUZINSKY: I think so.

13 UNIDENTIFIED SPEAKER: We've been working hard.

14 MR. RUZINSKY: Sprinting hard.

15 THE COURT: No, I know that you do and I -- that
16 wasn't a suggestion of anything to the contrary. I just
17 want to make sure that you, and I know I'm pushing everybody
18 to start on a certain date. I do want -- you know, look at
19 that week and try to figure out -- I want to be efficient
20 about it, and just make sure that the time block works, and
21 if folks are going to be here. And I just want you to think
22 about it, I don't have a position one way or another with
23 what you do.

24 If we're going to have a lot of our New York
25 colleagues here all week and they want to make sure that

1 they catch Friday afternoon flights, all fine by me. I want
2 people to be home, I want people to enjoy life. But I can
3 use the time, I just need people to tell me, that's all I'm
4 after. All right?

5 MR. RUZINSKY: Pretty good. We'll do so --

6 THE COURT: All right.

7 MR. RUZINSKY: -- Judge.

8 THE COURT: Terrific. Then everyone have a great
9 day and I'll see everybody soon. We'll be adjourned.

10 MR. EHRLICH: Your Honor, thank you.

11 (Hearing adjourned 5:11 p.m.)

12 * * * * *

13 *I certify that the foregoing is a correct*
14 *transcript to the best of my ability due to the condition of*
15 *the electronic sound recording of the ZOOM/video/telephonic*
16 *proceedings in the above-entitled matter.*

17 /S/ MARY D. HENRY

18 CERTIFIED BY THE AMERICAN ASSOCIATION OF

19 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337

20 JUDICIAL TRANSCRIBERS OF TEXAS, LLC

21 JTT TRANSCRIPT #67194

22 DATE FILED: MAY 11, 2023

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